



Date: May 8, 2012

To: Thomas J. Bonfield, City Manager
Through: Keith Chadwell, Deputy City Manager
From: Reginald J. Johnson, Interim Director
Department of Community Development
Subject: Community Development Block Grant Agreement with McCormack
Baron Salazar Development, Inc. for Site Preparation and Infrastructure
Activities in Southside East.

Executive Summary

On February 23, 2012 the City along with its agent, McCormack Baron Salazar Development, Inc. issued a bid package for the demolition and removal of the existing streets and infrastructure of the 19.83 acre site known as Rolling Hills. Additional specifications included the installation of erosion and sedimentation control measures, mass grading of the entire 19.83 acre site, environmental remediation, along with installation of new streets, curbs, sidewalks, street tress, street lights, water and sewer lines and storm drainage to serve the Phase 1 development. Five bids were received on the March 28, 2012 due date.

Contractor	A Base Bid	B Alt #1	C Alt #1 +Alt #2	D Alt #1 + Alt #3
D. Washington Group	8,494,000.00	8,662,500.00	7,601,454.00	7,674,842.00
Sullivan Eastern, Inc.	5,780,924.80	5,920,994.80	5,805,477.87	5,098,255.41
Triangle Paving and Grading, Inc.	5,969,371.00	6,087,371.00	5,942,749.90	4,916,781.00
DH Griffin Infrastructure, LLC	4,985,929.00	5,060,839.00	4,816,616.25	3,985,989.00
Devere Construction Company, Inc.	4,504,620.00	4,572,710.00	4,497,015.93	3,957,146.94

A = Base Bid

B = Base bid with Alternate #1 accepted

C = Base bid with Alternate #1 and #2 accepted

D = Base bid with Alternate #1 and #3 accepted

Devere Construction Company, Inc was the apparent lowest bidder but was deemed non responsive based on not meeting the established minority participation goals of 13%. It did meet the women owned participation goal of 5%. Devere appealed the Department of Equal Opportunity and Equity Assurance's decision but the ruling was upheld by the City Manager's office based on their failure to demonstrate a good faith effort. The next lowest bidder was DH Griffin Infrastructure, LLC and it is in compliance with the Ordinance to

Promote Equal Business Opportunities in City of Durham contracting.

Recommendation

The Department of Community Development recommends that City Council authorize the expenditure of up to \$6,250,000.00 in Community Development Block Grant funds for site preparation and infrastructure activities, authorize the expenditure of \$600,000.00 in Housing Bond Program Income funds for site preparation and infrastructure activities, authorize the City Manager to execute a Community Development Block Grant Agreement with McCormack Baron Salazar, Inc. in an amount up to \$6,250,000.00, authorize the City Manager to execute a Housing Bond Program Income Grant Agreement with McCormack Baron Salazar, Inc. in an amount up to \$600,000.00, establish, within the total amount, a contingency fund in the amount of \$500,000.00 from Community Development Block Grant funds; and authorize the City Manager to negotiate change orders provided that the cost of all change orders does not exceed \$500,000.00 and the total amount of the CDBG Agreement does not exceed \$6,850,000.00.

Background

At the September 8, 2011 work session, City Council approved a Community Development Grant Agreement (CDBG) in the amount of \$550,000.00 with MBS to pay for predevelopment activities for the 19.83 acre site to include a phase I environmental assessment, geotechnical exploration and testing. The grant also provided funding for site design to include civil and landscape and the preparation of bid documents for demolition of the existing streets and infrastructure, sedimentation and erosion control, mass grading of the entire site, along with site preparation, environmental remediation and the design of new infrastructure improvements for the Phase 1 site. The tasks have been completed with approximately \$475,000.00 drawn against the contract amount of \$550,000.00.

Issues/Analysis

The City will provide the funding for the CDBG Agreement through a Section 108 loan and available housing bond program income for the demolition of the existing streets and infrastructure, mass grading of the entire 19.83 acre site, site preparation, environmental remediation and the new streets and associated infrastructure improvements for the Phase 1 site which consists of approximately 7 acres. Except for the installation of the new streets and infrastructure, the scope of work in the site preparation bid package are tasks that would be required to prepare the site for any future development with or without MBS being the lead developer for the site.

After NCHFA award of tax credits for Phase 1, in September 2011, the City and MBS entered into a CDBG Agreement to advance the design and engineering for the site prep and public infrastructure work. In late 2011 a Phase 1 environmental assessment was prepared and geotechnical explorations were undertaken. As a result of both these investigations a previously unknown construction debris field was discovered buried beneath the surface of the site along with several smaller and more minor areas of environmental concern. This discovery triggered the need to undertake a Phase 2 environmental assessment which was undertaken in early 2012. The area of construction debris was further identified encompassing about a 1 acre contiguous area of the site with a depth of debris up to 17 feet below the surface (see attached Exhibit). Lab testing of samples indicated the presence of asbestos along with minor amounts of other hazardous wastes to include lead.

This discovery led to the inclusion of an environmental remediation specification and two bid alternates within the Site Prep and Public Infrastructure bid package to remediate the

site. Simultaneously the developer made application, with the City's consent, to the NC Department of Environmental and Natural Resources Brownfields program. MBS received a letter of eligibility from NCDENR on March 30, 2012 and immediately began review of the proposed remediation strategies with NCDENR.

MBS and the City learned that the remediation strategy included as part of the Base Bid as well as Alternates #2 and #3 must be approved by the North Carolina Department of Environment and Natural Resources (NCDENR) Brownfields' Program. The City, MBS and an environmental consultant are still in discussion with NCDENR seeking approval of the remediation in the Base Bid as well as the one set forth in Alternate 3. As it stands today it is our understanding that NCDENR will approve both the Base Bid and the Alternate so long as all debris that is excavated from the identified contaminated area be treated and disposed of as Asbestos Contaminated material at a licensed NC landfill that accepts that material. The cost of disposing of all the debris in that manner (as opposed to separating and disposing of uncontaminated material at lower cost) will now be at slightly greater cost than the bids submitted by the bidders, but since the bid documents requested unit prices for various types of transport and disposal from all the bidders, DH Griffin which offered the lowest price for asbestos contaminated material transport and disposal, still presents the lowest cost to the City. This amount equates to an increase of \$292,541.00 to DH Griffin's base bid plus alternate #1. MBS and the City are hopeful in receiving a formal determination and preliminary approval from NCDENR within the next 2-3 weeks.

Alternate #2 has been eliminated from consideration because if this alternate was accepted, it would require additional engineering and construction costs for foundations for four of the buildings which would outweigh any savings derived from Alternate #2.

Alternate #3 is the most cost effective for the City, as it allows for some of the material deeper in the debris hole to remain on site and be capped and covered in place. These capped and covered areas must have a minimum cover of 2-4 feet of clean soil over top of a witness barrier. If Alternate #3 is approved by NCDENR and accepted by the City, it would save approximately \$830,000 from the base bid amount.

In the worst case, if NCDENR does not approve Alternate #3, staff would recommend moving forward with DH Griffin Infrastructure, LLC for a contract amount of \$5,353,380.00 plus a contingency in the amount of \$500,000.00 and MBS will earn a management fee in the amount of \$400,000.00. MBS has agreed to cap its fee at this fixed amount which is far less than the 16% agreed to in the MDA. Additional services to include geotechnical testing and engineering services, environmental spotting, testing and oversight for removal of the contaminated soil, additional bid package engineering services primarily to deal with the required environmental remediation, and the design of on-street parking for Lakewood Avenue and Roxboro Road and additional legal services in an approximate amount of \$600,000.00 will be included in the agreement. See the Scope of Work in the CDBG Agreement for a detailed summary of each additional task.

The DH Griffin Infrastructure, LLC price (not including rock removal, at \$385,000.00 and environmental remediation costs, at \$2,350,000.00) is in line with the engineer's estimate of \$2,900,000.00; and the price (not including rock and environmental remediation cost) along with associated design and other non-environmental related costs is also in line with the estimated amount of \$3,887,410.00 that was included for needed Site Preparation and Public Infrastructure costs that the City agreed to pay for in its letter to NCHFA in May 2011 that was submitted in support of the Phase 1 tax credit application. The additional costs that result from the discovery of rock and buried construction debris and contaminated material

on the site with the contaminated soil accounting for approximately \$2,735,000.00 in costs of their base bid to remove, transport and dispose, along with approximately an additional \$330,000.00 of environmental engineering, design and remediation oversight, testing and monitoring costs.

Alternatives

The City Council could elect to not approve the CDBG Agreement with MBS. Without an agreement, the Phase 1 development project would not move forward and the tax credits would be forfeited as tax credits are awarded to a developer not to a particular project or to a local unit of government. It should also be noted that if the City chose another direction which did not include MBS, it would result in the forfeiture of \$950,000.00 in NSP3 funding awarded to the project due to award being site specific to the redevelopment of the Phase 1 site. In addition the City would still have a publicly identified environmental liability which it must deal with.

Financial Impact

The financial impact associated with the CDBG Agreement will be a maximum amount up to \$6,250,000 in Section 108 loan funds and \$600,000.00 in housing bond program income. If NCDENR approves alternate #3, then the total agreement amount decreases to an amount not to exceed \$6,100,000. Below is a summary of the total costs included in the CDBG Agreement.

Construction Scope of Work (incl. Alt 1)	\$5,353,380
Contingency	500,000
Developer Management Fee	400,000
Geotechnical Testing and Engineering Services	164,535
Environmental Air Quality Monitoring Testing during Construction	100,000
Environmental Oversight and Consulting	35,000
Legal Services Review of Environmental Docs/NCDENR	25,000
Parking Services	79,840
Bid Package Services	171,733
Total	6,829,488
(-) Based on NCDENR Approval of Alternate 3	(829,096)
Total	\$6,000,392

SDBE Summary

The Equal Opportunity/Equity Assurance Department reviewed the bid submitted by DH Griffin, LLC and determined they were in compliance with the Ordinance to Promote Equal Business Opportunities in City of Durham contracting.

SDBE Requirements

Firm	ID	City/State	Amount	% of Contact
TA Howard and Sons	MSDBE	Raleigh, NC	\$272,350	5.5%
Quality and Precision	MSDBE	Durham, NC	\$ 15,000	0.3%
Covenant Trucking	MSDBE	Youngsville NC	\$373,000	7.5%
Certified Concrete	WSDBE	Raleigh, NC	\$ 79,000	1.6%

RDU Paving	WSDBE	Raleigh, NC	\$ 59,500	1.2%
Southern Garden	WSDBE	Apex, NC	\$ 10,900	0.2%
Carolina Transport	SDBE	Apex, NC	\$104,704	2.1%

The goals for the project were: 13% M/SDBE and 5% W/SDBE. DH Griffin Infrastructure, LLC attained participation rates off 13.3% MSDBE and 5.1% WSDBE. Carolina Transport, a SDBE was used to fulfill part of the WSDBE requirements, in accordance with our ordinance to Promote Equal Business Opportunity with the City of Durham.